

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 110

January 22, 1954

COMMUNITY PROPERTY: DIVISION UPON DIVORCE

Syllabus:

When the division of community property pursuant to a property settlement agreement is basically a bargain and sale, it will be treated as a taxable transaction rather than a nontaxable equal division of community property.

A property settlement agreement entered into in September, 1950, was incorporated into the divorce decree when it became final. Under the agreement the wife received certain personal property, a life insurance policy, and \$100,000 to be paid in installments. The husband received a motion picture production company, real estate, automobiles, an airplane, and other items including 90 shares of stock. According to an estimate of value attached to the agreement, the division of the property appears to be equal upon payment by the husband of the \$100,000 (not designated as community property) and assumption by the husband of the community obligations. The division of the property was accepted by the wife "in lieu of" maintenance and support.

The stock was valued for purposes of the agreement at \$225,000. It was sold two months later by the husband for \$364,000.

Advice is requested whether the division of the community property constituted a taxable transaction.

An equal division of community property may not be a sale or exchange which gives rise to a taxable transaction; however, this does not preclude the possibility of a sale or exchange. In the case of Brown, 12 TCM 998, the court held that where evidence showed that the community assets were not being equally divided and that the property agreement merely represented the best bargain that could be driven under the circumstances, the transaction was basically a sale rather than a division or partition.

In the instant case, the facts show that the husband sold the stock for an amount which was substantially in excess of the value placed on it in the agreement; that the major portion of the community assets went to the husband; and it does not appear to what extent the giving up of maintenance and support played in the negotiations. Therefore, the settlement should be treated as a taxable transaction, i.e., a sale, rather than a nontaxable equal division of community property.